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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL EUGENE WYATT,
Petitioner,
v.
JOHN SUTTON,
Respondent.

Case No. [18-cv-06588-PJH](#)

**ORDER DENYING MOTION FOR A
STAY; GRANTING EXTENSION**

Re: Dkt. Nos. 32, 37

Petitioner, a California prisoner, proceeds with a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The first two petitions were dismissed with leave to amend because it was not entirely clear the claims petitioner had presented. Liberally construing the second amended petition, petitioner asserted that: (1) the trial court erred by failing to instruct the jury on self-defense and imperfect self-defense; (2) there was insufficient evidence of premeditation and deliberation for first degree murder; and (3) ineffective assistance of counsel for failing to object to improper jury instructions and failing to present a claim of self-defense. The court found that those claims were sufficient to require a response and issued an order to show cause. The court noted that if those were not the claims petitioner wished to proceed with, he must inform the court within fourteen-days. Petitioner submitted several filings and indicated he wished to move forward with the order to show cause. Docket No. 24 at 2; Docket No. 26 at 1.

Petitioner then filed a motion requesting a stay to exhaust a claim regarding self-defense jury instructions. The motion was dismissed with leave to amend because petitioner had not presented any arguments for good cause and it was not clear if the claim was new or a claim already identified by the court that was unexhausted. Petitioner

1 was advised to file an amended motion with arguments for good cause and to describe if
2 this is a new claim or one of the existing claims

3 In *Rhines v. Weber*, 544 U.S. 269 (2005) the United States Supreme Court found
4 that a stay and abeyance of a mixed federal petition should be available only in the
5 limited circumstance that good cause is shown for a failure to have first exhausted the
6 claims in state court, that the claim or claims at issue potentially have merit and that there
7 has been no indication that petitioner has been intentionally dilatory in pursuing the
8 litigation. *Rhines, supra*, at 277-78. Petitioner has submitted several filings but has failed
9 to address the standard in *Rhines* and had failed to provide more information regarding
10 the claim. The amended motion for a stay (Docket No. 32) is **DENIED**. Respondent's
11 motion for an extension (Docket No. 37) is **GRANTED**. Respondent has until **June 28,**
12 **2019**, to file a response to the petition.

IT IS SO ORDERED.

14 Dated: May 3, 2019

PJW

PHYLLIS J. HAMILTON
United States District Judge

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4 MICHAEL EUGENE WYATT,
5 Plaintiff,
6 v.
7 JOHN SUTTON,
8 Defendant.

Case No. 18-cv-06588-PJH

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28 **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 3, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Eugene Wyatt ID: AW6376
Wasco State Prison
101 Scofield Avenue
P.O. Box 8800
Wasco, CA 93280

Dated: May 3, 2019

Susan Y. Soong
Clerk, United States District Court

Kelly Collins

By: _____
Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON